

CITY OF HUNTINGTON BEACH

City Council Interoffice Communication

To: Honorable Mayor Hardy and City Council Members
From: Council Member Debbie Cook *Dee*
Date: February 25, 2005
Subject: *H-Item – Request to Amend Municipal Code 5.64 relating to Bingo Games*

RECEIVED
CITY CLERK
CITY OF
HUNTINGTON BEACH, CA
2005 MAR - 1
A 101

Under current City Municipal Code, Chapter 5.64, Section 5.64.110 (b), the city sets a limitation of \$1,000 on the portion of the proceeds from a lawful bingo game that can be used to cover administrative expenses such as rental of property, and purchase of equipment, etc. A copy of Chapter 5.64 is attached.

The Huntington Beach Elks Lodge #1959 has requested that the allowable administrative expenses be increased from \$1,000 to \$2,000. This would bring the city's code into alignment with current State laws regulating bingo.

Since our code has not been amended since 1993, it seems reasonable to make this minor change. To that end, I make the following motion:

MOTION:

Direct that the City Attorney prepare for City Council consideration, an amendment to Municipal Code Chapter 5.64, Section 110 (b), increasing the allowable administrative expenses for a lawful bingo game from \$1,000 to \$2,000.

Attachment:

1. Municipal Code 5.64 – Bingo Games
2. Letter from the City Attorney dated Feb. 16, 2005

March 7, 2005 council meeting

H-2a

**INTENTIONALLY
LEFT
BLANK**

H-202

ATTACHMENT #1

Chapter 5.64**BINGO GAMES**

(2102-9/76, 2220-10/77, 2446-9/80, 2694-7/84, Urg. Ord. 2728-9/84, 3137-6/92, 3190-5/93)

Sections:

- 5.64.010 Definitions
- 5.64.015 Permit--Required
- 5.64.020 Organizations eligible for city permit to conduct bingo games
- 5.64.030 Application for permit
- 5.64.040 Applicant must be qualified
- 5.64.050 Contents of application
- 5.64.060 Investigation of applicant
- 5.64.070 Contents of permit
- 5.64.080 Suspension of permit
- 5.64.090 Suspension of permit--Appeal procedure
- 5.64.100 Maximum amount of prize
- 5.64.110 Profits to be kept in separate fund or account
- 5.64.115 Disbursements from fund or account
- 5.64.120 Financial interest in permittee only
- 5.64.130 Exclusive operation by permittee
- 5.64.140 Bingo games open to public
- 5.64.150 Attendance limited to occupancy capacity
- 5.64.160 Bingo games conducted only on permittee's property
- 5.64.170 Minors not to participate
- 5.64.180 Intoxicated persons not to participate
- 5.64.190 Hours and days of operation
- 5.64.200 Participant must be present

5.64.010 Definitions. "Bingo game," as used in this chapter, means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random and which game is either:

- (a) Conducted among persons any or all of whom have paid or promised to pay, any valuable consideration for the right to participate in such game; or
- (b) Conducted among persons none of whom has paid, or promised to pay, any valuable consideration for the right to participate where the total value of the prizes awarded in such game exceeds twenty-five dollars (\$25). (2102-9/76, 2220-10/77, 2446-9/80)

5.64.015 Permit--Required. No person shall conduct any bingo game within the City of Huntington Beach without first obtaining a permit to do so from the City pursuant to this chapter. Any person conducting a bingo game without a permit to do so as required by this chapter shall be guilty of a MISDEMEANOR. (2220-10/77)

5.64.020 Organizations eligible for city permit to conduct bingo games. No person shall be eligible for a bingo permit unless such person is a mobilehome park association or a senior citizens organization or is an organization exempt from the payment of the bank and corporation tax by any one of the following: sections 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g) or 23701(l) of the California Revenue and Taxation Code; and provided that the proceeds of such games are used only for charitable purposes. (2102-9/76, 2220-10/77)

5.64.030 Applications for permit. Eligible organizations desiring to obtain such permit to conduct bingo games in the City of Huntington Beach shall file an application in writing therefor in the Office of the License Supervisor on a form to be provided by the License Supervisor. The issuing authority shall be the City Administrator. (2102-9/76, 2220-10/77)

H-29.3

5.64.040 Applicant must be qualified. No permit shall be issued to any organization unless such applicant is an eligible organization under section 326.5 of the California Penal Code and section 5.64.020 of this chapter and its application conforms to the requirements, terms and conditions of this chapter. (2102-9/76, 2220-10/77)

5.64.050 Contents of application. Said application for a permit shall contain the following:

- (a) The name of the applicant organization and a statement that applicant is an eligible organization under section 5.64.020.
- (b) The name and signature of at least two (2) officers, including the presiding officer, of the organization.
- (c) The particular property within the City of Huntington Beach, including the street number, owned or leased by the applicant, used by such applicant for an office or for performance of the purposes for which the applicant is organized, on which property bingo games will be conducted, together with the occupancy load as noted on the certificate of occupancy issued for such property. Nothing in this chapter shall be construed to require that the property owned or leased by the organization be used or leased exclusively by such organization.
- (d) Proposed days of week and hours of day for conduct of bingo games.
- (e) That the applicant agrees to conduct bingo games in strict accordance with the provisions of section 326.5 of the Penal Code and this chapter as they may be amended from time to time, and agrees that the permit to conduct bingo games may be revoked by the City Administrator upon violation of any of such provisions.
- (f) Said application shall be signed by the applicant under penalty of perjury.
- (g) An annual permit fee fixed by the City Council by resolution shall accompany the application. The annual fee, whether for the initial permit or renewal shall not exceed fifty dollars (\$50). If an application for a license is denied, one-half of any license fee paid shall be refunded to the organization.
- (h) The applicant shall also submit, with its application, written proof that it is a mobilehome park association or a senior citizens organization or written proof from the state franchise board that it is an organization exempt from the payment of the bank and corporation tax by any one of the following: sections 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g) or 23701(l) of the Revenue and Taxation Code of the state of California. Such written proof must be in a form acceptable to the City of Huntington Beach. (2102-9/76, 2220-10/77)

5.64.060 Investigation of applicant. Upon receipt of the completed application and the fee, the finance director shall refer the same to interested departments of the City, including but not limited to the City Administrator, Police Department, and the Fire Department for investigation as to whether or not all the statements in the application are true and whether or not the property of the applicant qualifies, and the extent to which it qualifies, as property on which bingo games may lawfully be conducted as to fire, occupancy and other applicable restrictions. (2102-9/76, 2220-10/77)

5.64.070 Contents of permit. Upon being satisfied that the applicant is fully qualified under law to conduct bingo games in the City of Huntington Beach, the City Administrator shall issue a permit to said applicant, which shall contain the following information:

- (a) The name and nature of the organization to whom the permit is issued.
- (b) The address where bingo games are authorized to be conducted.

H-29.4

- (c) The occupancy load is noted on the certificate of occupancy issued for the property in which bingo games are to be conducted.
- (d) The date of the expiration of such permit.
- (e) Such other information as may be necessary or desirable for the enforcement of the provisions of this chapter. (2102-9/76, 2220-10/77)

5.64.080 Suspension of permit.

- (a) Whenever it appears to the City Administrator that the permittee is conducting a bingo game in violation of any of the provisions of this chapter, the City Administrator shall have the authority to suspend the permit and order the permittee to cease and desist immediately any further operation of any bingo game.
- (b) Any person who continues to conduct a bingo game after suspension thereof under subsection (a) above shall be guilty of a MISDEMEANOR. (2102-9/76, 2220-10/77)

5.64.090 Suspension of permit--Appeal procedure. The procedure for appeal following suspension of permit is as follows:

- (a) Within seven (7) days after the receipt of the notice of suspension, the applicant shall file a notice of appeal with the City Clerk, addressed to the City Council, and stating the basis of the appeal.
- (b) The City Clerk shall schedule a hearing to be held within fifteen (15) days of the filing of the notice of appeal. The City Clerk shall cause the applicant to be given notice of the hearing by certified mail at least five (5) days in advance of the date of the hearing. The applicant, or his designated representative, may appear before the City Council, and make an oral presentation of the appeal, or he may make the appeal through a written statement, or he may do both. The City Council shall rule on the appeal within fifteen (15) days after it is heard and such ruling shall be final. (2102-9/76, 2220-10/77)

5.64.100 Maximum amount of prize. The total value of prizes awarded during the conduct of any bingo game shall not exceed two hundred fifty dollars (\$250) in cash or kind, or both, for each separate game which is held. (2102-9/76, 2220-10/77)

5.64.110 Profits to be kept in separate fund or account. With respect to organizations exempt from payment of the bank and corporation tax by section 23701(d) of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Such profits shall be used only for charitable purposes. With respect to other organizations authorized to conduct bingo games pursuant to this section, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Such proceeds shall be used only for charitable purposes, except as follows:

- (a) Such proceeds may be used for prizes.
- (b) A portion of such proceeds, not to exceed twenty (20%) percent of the proceeds before the deduction for prizes, or one thousand dollars (\$1,000) per month, whichever is less, may be used for rental of property, overhead, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel. (3190-5/93)

The City of Huntington Beach, by and through its authorized officers, shall have the right to examine and audit all books and records of any permittee hereunder at any reasonable time and

permittee shall fully cooperate with the City of Huntington Beach by making such books and records available. (2102-9/76, 2220-10/77)

5.64.115 Disbursements from fund or account. All disbursements from the special bingo fund or account shall be by consecutively-numbered checks, signed by two authorized officers of the permittee organization and shall be payable to a specific individual or organization. There shall be written on each check the nature of the expenditure for which the check is drawn. No checks shall be payable to "cash" except those written to establish and maintain a petty cash fund which shall contain no more than twenty-five dollars (\$25) at any time. The check shall be marked "For deposit to petty cash fund." Any disbursement from the petty cash fund shall be evidenced by a receipt showing the amount, reason for disbursement, and the name of the individual or organization receiving the money. (2694-7/84)

5.64.120 Financial interest in permittee only. No individual, corporation, partnership, or other legal entity except the permittee, shall hold a financial interest in the conduct of such bingo game. (2102-9/76, 2220-10/77)

5.64.130 Exclusive operation by permittee.

- (a) A bingo game shall be operated and staffed only by members of the permittee organization. Such members shall not receive a profit, wage or salary from any bingo game. Only the permittee shall operate such game, or participate in the promotion, supervision, or any other phase of such game.
- (b) One member of the permittee organization shall be designated as the "bingo manager," and shall be responsible for the conduct and operation of bingo games, and for compliance with all applicable laws, rules and regulations promulgated thereunder.
- (c) All staff members of permittee organization shall wear on the outside of their clothing an identification tag or badge, not less than 2 1/2" x 3 1/2" in dimension, bearing the name of the staff member and the permittee organization. (2102-9/76, 2220-10/77, 2694-7/84)

5.64.140 Bingo games open to public. All bingo games shall be open to the public, not just to the members of the permittee organization. (2102-9/76, 2220-10/77)

5.64.150 Attendance limited to occupancy capacity. Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which such game is conducted as determined by the Fire Department and Community Development Department of the City of Huntington Beach in accordance with applicable laws and regulations. Permittee shall not reserve seats or space for any person. (2102-9/76, 2220-10/77)

5.64.160 Bingo games conducted only on permittee's property. A permittee shall conduct a bingo game only on property owned or leased by it, and which property is used by such organization for an office or for performance of the purposes for which the organization is organized. The permit issued under this chapter shall authorize the holder thereof to conduct bingo games only on such property, the address of which is stated in the application. In the event the described property ceases to be used as an office and as a place for performance of the purposes for which the permittee is organized, the permit shall have no further force or effect. A new permit may be obtained by an eligible organization, upon application under this chapter, when it again owns or leases property used by it for an office or for performance of the purposes for which the organization is organized. Nothing in this chapter shall be construed to require that the property owned or leased by the organization be used or leased exclusively by such organization. (2102-9/76, 2220-10/77)

5.64.170 Minors not to participate. No person under the age of eighteen (18) years of age shall be allowed to participate in any bingo game. (2102-9/76, 2220-10/77)

5.64.180 Intoxicated persons not to participate. No person who is obviously intoxicated shall be allowed to participate in a bingo game. (2102-9/76, 2220-10/77)

5.64.190 Hours and days of operation. No permittee shall conduct bingo games on more than one (1) day during any seven (7) day period, or more than six (6) hours out of any twenty-four (24) hours during such seven (7) day period. Provided, however, that one week each year, a permittee, upon written application to the City License Division, filed thirty (30) days prior to the first bingo game, after approval thereof, may conduct games either three (3) days during one seven (7) day period, or one game for no more than twelve (12) hours. Operation shall otherwise be in compliance with this chapter. No bingo games shall be conducted between 2 a.m. and 10 a.m. of any day. (2102-9/76, 2220-10/77, 2446-9/80, Urg. Ord. 2728-9/84, 3137-6/92)

5.64.200 Participant must be present. No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place at which the bingo game is being conducted. (2102-9/76, 2220-10/77)

ATTACHMENT #2

H-29.8



Jennifer McGrath
City Attorney

**OFFICE OF
CITY ATTORNEY**

**P.O. Box 190
2000 Main Street
Huntington Beach, California 92648**
Telephone: (714) 536-5555
Facsimile: (714) 374-1590

**Paul D'Alessandro, Assistant City Attorney
Scott Field, Assistant City Attorney
Neal Moore, Sr. Deputy City Attorney
Lee Burke, Deputy City Attorney
John Fujii, Deputy City Attorney
Leonie Mulvihill, Deputy City Attorney
Sarah Sutton, Deputy City Attorney**

February 16, 2005

Bill Herrel, Exalted Ruler
Huntington Beach Elks Lodge #1959
7711 Talbert Avenue
Huntington Beach, CA 92648

Re: Bingo Games

Dear Mr. Herrel,

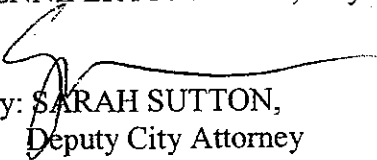
I am writing in response to your letter of January 22, 2005 concerning Bingo. I understand you wish to have the municipal code amended so that the maximum monthly amount of proceeds that may be used for operating be increased from \$1,000 to \$2,000. This would make the municipal code consistent with state laws on bingo games.

There are two ways that a proposed amendment to an ordinance may be agendized for City Council consideration. A Council Person may bring the issue as an "H" item or a Department Head can ask the City Attorney's office to prepare the amendment on the agenda as a "G" item. I would suggest you meet with one of the Councilmembers and see if you can persuade him or her to agendize the matter.

Please call if you need further advice.

Very truly yours,

JENNIFER MCGRATH, City Attorney

By: 
SARAH SUTTON,
Deputy City Attorney

SCS/k

H-29.9